

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL C. BOLIN,)	Case No. CIV. F-99-5279-AWI-P
)	
Petitioner,)	
)	<u>Death Penalty Case</u>
vs.)	
)	Order Granting in Part and
ROBERT J. AYERS, Jr., Acting)	Denying in Part Petitioner's
Warden of San Quentin State)	Motion for Discovery
Prison,)	(Doc No. 166)
)	
Respondent.)	
)	

Petitioner Paul C. Bolin ("Bolin") filed a motion June 12, 2006, seeking pre-briefing discovery. Respondent Robert J. Ayers, Jr. ("the State") opposes the motion. This matter came on for hearing on August 21, 2006, the Honorable Anthony W. Ishii presiding. Bolin was represented by his appointed counsel Assistant Federal Defender Allison Claire. The State was represented by Deputy Attorney General Rachelle Newcomb. The hearing was conducted to attempt to resolve disputed issues from Bolin's discovery request which were not amenable to informal discovery.

Discovery in federal habeas litigation is regulated by

1 Rule 6 of the Rules Governing § 2254 Cases. Unlike regular civil
2 actions, discovery in federal habeas actions can only be
3 conducted with permission of court and permission is only granted
4 for a showing of "good cause." In this context, good cause has
5 two primary elements. The first is that the material sought is
6 not available by informal means. The second relates to a strict
7 construction of relevance. That is, discoverable information in
8 habeas proceedings requires a closer nexus of proof to presented
9 claims than is required in regular civil actions. Specifically,
10 with respect to Bolin, for specified discovery to be authorized,
11 he must make a showing that the purpose of the discovery is to
12 establish entitlement to relief. See *Jones v. Wood*, 114 F.3d
13 1002, 1009 (9th Cir. 1997) (discovery is appropriate to permit
14 petitioner to establish entitlement to relief); *Bracy v. Gramley*,
15 520 U.S. 899, 908-09 (1997) (discovery must be made available
16 where specific allegations show reason to believe petitioner
17 would be entitled to relief if specific facts are developed);
18 *Harris v. Nelson*, 394 U.S. 286, 300 (1969) (discovery is
19 available to petitioner, who upon specific allegations, convinces
20 the court he may, if the facts are developed, be able to
21 demonstrate that he is entitled to relief).

22 The expansive construction of relevance in civil cases, to
23 embrace all information "reasonably calculated to lead to the
24 discovery of admissible evidence" specified in Federal rule of
25 Civil Procedure 26(b)(1), is not appropriate in habeas corpus
26 cases. Habeas corpus is not a proceeding to learn facts. See

1 e.g., *Harris*, 394 U.S. at 297 (broad-ranging preliminary inquiry
2 is neither necessary nor appropriate in the context of a habeas
3 proceeding); *Rich v. Calderon*, 187 F.3d 1064, 1067 (9th Cir.
4 1999) (habeas corpus "was never meant to be a fishing expedition
5 for habeas petitioners to 'explore their case in search of its
6 existence'"). Conversely, the discovery standard is more lenient
7 than the standard to justify an evidentiary hearing. To obtain
8 discovery, a petitioner must show that if the facts are developed
9 he may be able to demonstrate he is entitled to relief. *Bracy*,
10 520 U.S. at 909. In order to obtain an evidentiary hearing, a
11 petitioner must show that if the facts are proved, he would be
12 entitled to relief. *Jones v. Wood*, 114 F.3d 1002, 1010 (9th Cir.
13 1997).

14 With respect to the State, case authority construing Rule 6
15 of the § 2254 Rules appears limited to issuance of protective
16 orders for ordered disclosure of attorney-client materials
17 relevant to ineffective assistance of counsel claims. In *Bittaker*
18 *v. Woodford*, 331 F.3d 715 (9th Cir. 2003) the Ninth Circuit
19 instructs:

20 If a district court exercises its discretion to allow
21 such discovery "to the extent that . . . good cause
22 [is] shown," it must ensure compliance with the
23 fairness principle. To that end, it must enter
appropriate orders clearly delineating the contours of
discovery, and strictly police those limits thereafter.

24 *Id.* at 728. Thus, under *Bittaker*, a protective order is
25 available to limit the waiver as necessary to litigate a claim of
26 ineffective assistance of counsel in federal court. See *id.* at

1 721-22.

2 **A. Open-File Review of the Kern County DA's Case File in *People***
3 ***v. Bolin*.**

4 In preparation for briefing on the ineffective assistance of
5 counsel and *Brady* claims, Bolin attempted to reconstruct the
6 materials in the possession of trial counsel, but due to
7 intermingling of records by prior counsel this has proved
8 impossible. On May 22, 2006, the Kern County District Attorney's
9 Office produced 380 pages of documents, but there was no
10 consecutive numbering and many numbered pages were missing.
11 Bolin seeks open-file review of the prosecutor's file.

12 The State opposes open-file review, claiming that the
13 requested discovery will not shed light on when trial counsel
14 received discovery; that disclosure has already been made; that
15 Bolin has not asked prior counsel for information about the
16 files; that Bolin must disclose efforts he made to ascertain this
17 information; and that the State is not required to help Bolin
18 organize his files.

19 No evidence has been presented that Bolin's current counsel
20 is at fault for the state of documents in their possession. The
21 open-file review will not be overly burdensome on the Kern County
22 District Attorney's Office. Any assertion that documents are
23 privileged or otherwise non-discoverable should be made pursuant
24 to Federal Rules of Civil Procedure, Rule 26(b)(5). Bolin's
25 motion for open-file review of the Kern County District
26 Attorney's file in *People v. Bolin* is GRANTED.

1 **B. Discovery Concerning Batson Claims.**

2 Bolin seeks background materials regarding potential jurors,
3 documents regarding the Kern County District Attorney's jury
4 selection in this case, and general policies and procedure of the
5 Kern County District Attorney's office regarding jury selection
6 strategy. Bolin notes the prosecutor exercised peremptory
7 challenges against three Hispanic surnamed prospective jurors
8 with no objection from trial counsel or the trial court.

9 The State argues the merits of the claim, pointing out that
10 Bolin's panel did have a juror with an Hispanic last name,
11 Medina, and arguing that Bolin cannot prevail because the bare
12 record does not disclose whether the stricken prospective juror
13 was actually Hispanic or just had an Hispanic surname.

14 Establishment of a prima facie case of discrimination only
15 requires that a defendant proffer facts that give "rise to an
16 inference of discriminatory purpose." *Johnson v. California*, 545
17 U.S. 162, 125 S. Ct. 2410, 2416 (2005). Once the defendant
18 produces evidence sufficient to permit the trial judge to draw an
19 inference of discrimination, the burden shifts to the prosecutor
20 to establish a race-neutral reason for the strike. *Id.*, 545
21 U.S. 162, 125 S. Ct. at 2417-19. Contrary to the State's
22 argument, Hispanic surnames are used to establish whether a prima
23 facie case exists. *See e.g., United States v. Artero*, 121 F.3d
24 1256, 1261 (9th Cir. 1997). The striking of three jurors with
25 Hispanic surnames is sufficient to show good cause for the
26 requested discovery. Bolin's request for discovery is GRANTED.

1 **C. Discovery Related to Brady Claims.**

2 **1. Discovery Related to Eloy Ramirez.**

3 Ramirez testified that Bolin shot Vance Huffstuttler outside
4 the cabin in cold blood. Bolin claims he shot Huffstuttler in
5 the cabin after a fight, and hence the homicide was not first
6 degree murder, but voluntary manslaughter, at most. Ramirez
7 originally was arrested as an accomplice. After he spoke to
8 authorities, he was released and no charges were brought - even
9 for cultivating marijuana. Bolin believes and has alleged that
10 Ramirez was given inducements for false testimony against Bolin.
11 He seeks Ramirez's criminal records; interviews between Ramirez
12 and authorities; contacts between authorities and Ramirez's
13 cousin/lawyer (who negotiated Ramirez's release from custody),
14 Ramirez's girlfriend Patricia Islas, or any other person
15 regarding Ramirez's role as a witness; investigation records
16 concerning marijuana cultivation or drug trafficking operation;
17 and documents referencing Ramirez in connection with Jerry
18 Halfacre, Vance Huffstuttler, Rebecca Ward (Huffstuttler's
19 girlfriend), Brent Wilson, Ulysses "Chief" Williams, Steve Mincy,
20 or Jim Wilson.

21 The State argues the merits, claiming Bolin cannot prevail
22 because the police only arrested Ramirez to secure his
23 cooperation, not because they thought he was guilty, and that
24 Bolin already knew about the dropped charges at trial. Also, the
25 State argues that new facts developed from this discovery would
26 be unexhausted.

1 The documents sought are relevant to Bolin's claim of an
2 undisclosed inducement given to Ramirez in return for his
3 testimony, or for impeachment. Bolin's request for discovery
4 related to Eloy Ramirez is GRANTED.

5 **2. Discovery Related to Jerry Halfacre.**

6 Halfacre was the boyfriend of Bolin's daughter Paula and the
7 father of Bolin's granddaughter, Ashley. A letter Halfacre
8 received from Bolin threatening him for mistreating Paula and
9 Ashley was admitted during penalty proceedings as aggravating
10 evidence of acts or threats of acts of violence. The letter was
11 admitted through Halfacre's Los Angeles probation officer.
12 Halfacre did not testify. Shortly after Bolin's trial, Halfacre
13 was released from probation. Bolin seeks all criminal records
14 pertaining to Halfacre from the District Attorney's files,
15 documents reflecting interviews between Halfacre and authorities,
16 and any documents reflecting communications between Kern County
17 authorities and Halfacre's probation officer.

18 The State argues the merits claiming Bolin has not shown
19 Halfacre's release from probation was connected to Bolin's case,
20 and that the information requested would not impeach Halfacre.
21 Also, the State, quoting the California Supreme Court opinion,
22 argues that the letter was not prejudicial to Bolin's penalty
23 proceedings in any event.

24 Halfacre did not testify, so there was nothing to impeach.
25 Bolin argued in his reply that the letter was significant
26 penalty-phase evidence against him (notwithstanding the

1 California Supreme Court's finding to the contrary) and that he
2 needs the impeachment evidence to disprove that the letter
3 constituted a threat or that Halfacre perceived it as a threat.
4 This argument does not show relevance to the *Brady* claim. The
5 prosecutor could not have committed misconduct by failing to turn
6 over information about a non-testifying person. Bolin's request
7 for discovery related to Jerry Halfacre is DENIED.

8 **3. Discovery Related to Jim Wilson.**

9 Bolin contends Wilson talked to authorities when he returned
10 to the crime scene to collect his truck and they coached him to
11 testify consistent with Ramirez's testimony that Huffstuttler was
12 shot outside the cabin in cold-blood. In Wilson's first
13 statement to authorities, he reported that Bolin and Huffstuttler
14 went into the cabin, they argued and/or fought, and then there
15 was a gun shot. Bolin also asserts the circumstances leading up
16 to the crime suggest that Wilson had some prior connection to, or
17 knowledge of, the marijuana growing operation, and that the
18 prosecutor failed to disclose impeachment evidence. Bolin seeks
19 documents reflecting interviews and contacts between authorities
20 and Wilson, any information about investigation of Wilson and
21 marijuana cultivation, and documents and/or information
22 connecting Wilson with Ramirez, Halfacre, Huffstuttler, Mincy and
23 the others.

24 The State claims Bolin has not established Wilson talked to
25 authorities when he retrieved his truck and has not established
26 any documents exist. In any event, the State contends Bolin has

1 enough information to obtain and develop evidence on his own
2 without help from the District Attorney. Also, the State asserts
3 that a claim about Wilson's involvement with drug activity or
4 connecting him to Ramirez, Halfacre, Huffstuttler, Mincy and the
5 others, was not presented to the state court, and any new facts
6 developed regarding that issue would be unexhausted.

7 The documents sought are relevant to impeachment. Bolin's
8 request for discovery relating to Jim Wilson is GRANTED.

9 **4. Discovery Related to West Covina Witnesses.**

10 Counsel for both parties resolved this issue informally
11 during the hearing, stipulating to the issuance of a subpoena to
12 the Los Angeles County law enforcement regarding Bolin and/or
13 Vance Huffstuttler.

14 **D. Discovery Related to Forensic Issues.**

15 Bolin seeks all notes prepared by the People's Criminalist,
16 Greg Laskowski, regarding this case. He also seeks information
17 from the autopsies of Steve Mincy and Vance Huffstuttler,
18 including notes, lab test results, and memoranda.

19 The State claims Bolin is merely fishing to see if there is
20 something to use to support his case in the requested discovery.
21 Bolin's mere statement that his forensics expert needs more
22 information - without a declaration from the expert - is
23 insufficient to establish need or good cause. The State also
24 argues that the claim cannot prevail on the merits because
25 persuasive evidence exists that Huffstuttler was shot outside the
26 cabin in cold blood, not inside the cabin after a fight.

1 The documents sought are relevant to the claim that,
2 contrary to the testimony of the State's forensic witnesses, the
3 physical evidence was consistent with the defense theory that
4 Huffstuttler was shot in the cabin during a struggle and later
5 moved outside. Bolin's request for discovery is GRANTED.

6 **E. Related Law Enforcement Records.**

7 Bolin seeks background facts of witnesses or others whose
8 credibility and/or possible involvement in marijuana cultivation
9 would have been relevant to the defense of the case. He seeks
10 law enforcement records for: Huffstuttler, Rebecca Ward, Brent
11 Wilson, Steve Mincy, Ulysses "Chief" Williams, and all records
12 into suspected marijuana cultivation in the Walker Basin area
13 from 1985-89. Bolin asserts that any evidence Huffstuttler was
14 involved in marijuana cultivation or other criminal activities
15 with Eloy Ramirez, Jerry Halfacre, Jim Wilson, or any of the
16 above individuals, would undermine the prosecution's theory that
17 Bolin killed Huffstuttler for bringing strangers to the pot farm.

18 The State claims that Bolin's allegations of marijuana
19 cultivation are conclusionary and unsupported. On the merits,
20 the State argues there is no connection between the requested
21 discovery and success of Bolin's case. Finally, the State argues
22 this request is not supported by the allegations of the petition.

23 Even if Huffstuttler was involved in marijuana cultivation
24 or other criminal activities, the prosecution's theory regarding
25 motive would not necessarily be undermined. The documents sought
26 lack sufficient connection to the claims asserted in the

1 petition. Bolin's request for discovery is DENIED without
2 prejudice.

3 **F. Discovery Related to Jury's View of Crime Scene.**

4 The jury viewed the crime scene before deliberations
5 commenced. Bolin was not present. The claim is that
6 conversation among jurors, the judge, and two sheriff's deputies
7 who were trial witnesses, constituted improper taking of
8 testimony outside of court. Because there was some media
9 presence during the jury view, there was also improper influence
10 on the jurors. It's unclear when the media arrived at the jury
11 view. For this claim, Bolin wants third party subpoenas issued
12 to local television stations documenting any media presence at
13 the jury view, including the identities of crew members who were
14 present. Bolin also wants any footage shot by the media. From
15 the District Attorney, he wants any documents reflecting or
16 mentioning the media presence at the jury view.

17 The State contends that Bolin has not proved the media was
18 present, and even if they were present, the claim that they
19 influenced the jurors is speculative. In any event, the State
20 contends that having information about the media presence would
21 not support Bolin's proffered defense, and that Bolin is merely
22 fishing.

23 Bolin's request for discovery is GRANTED as to the
24 television stations. The requested discovery from the District
25 Attorney is duplicative of the open-file review granted above and
26 is DENIED.

1 **G. Discovery Related to "No-Narrowing" Claim.**

2 Claim BB alleges that the California Death Penalty statute
3 fails to provide a meaningful basis for distinguishing between
4 first degree murders that are and are not eligible for the death
5 penalty pursuant to *Furman v. Georgia*, 408 U.S. 238 (1972).

6 Bolin seeks from the State comprehensive access to case
7 information about every murder from November 7, 1978 to the
8 present which could have been charged as murder in the first
9 degree. This is the same discovery granted in *Frye v. Woodford*,
10 pending in the Sacramento Division of the Eastern District.

11 At the hearing, Bolin clarified that his request seeks to
12 allow counsel to participate in the process of the discovery in
13 *Frye*, and asserted that the results of the study can be presented
14 at an evidentiary hearing without discovery.

15 The State argues that the discovery being obtained in the
16 *Frye* case will not prove Bolin's claim, and that the study
17 conducted in another case might not be relevant here.

18 It is not clear that this Court has the authority to order
19 discovery from a completely separate case, especially when the
20 information is subject to a protective order, released to a third
21 party, here Bolin's counsel. Bolin's request for access extends
22 further than the order for shared discovery in another Sacramento
23 Division case, *Riel v. Woodford*. In *Riel*, discovery was granted
24 similar to discovery granted in *Frye*. Later, the parties agreed
25 that *Riel* would not conduct independent discovery to avoid
26 duplication of efforts, and would instead obtain the results of

1 the study and be entitled to rely on the study in support of his
2 petition. Discovery is not needed in order for Bolin to obtain
3 the results of the study, or to submit the study in support of
4 this claim. Bolin's request is DENIED without prejudice.

5 **H. Discovery Related to Lethal Injection.**

6 The parties agreed at the hearing to defer discovery on this
7 issue, subject to possible withdrawal of this claim from the
8 federal habeas petition to allow presentation in a § 1983 action.
9 The Court objected to leaving an unresolved motion on the docket,
10 and counsel for Bolin withdrew this discovery request, without
11 prejudice to raising it again later.

12 **ORDER**

13 Good cause having been shown, Bolin's request for discovery
14 is granted in part as indicated above. Counsel for Bolin shall
15 set a telephonic status conference to be held within 45 days of
16 the date of this order, to discuss the time line for completion
17 of discovery and the scheduling of the merits briefing and motion
18 for evidentiary hearing.

19
20
21 IT IS SO ORDERED.

22 **Dated: September 6, 2006**
23 **b64h1h**

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE